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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/828,005      06/02/97      LAVON

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QM41/0824

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EXAMINER

REICHLE, K

ART UNIT

PAPER NUMBER

3735

DATE MAILED:

08/24/98

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.	Applicant(s)
878005	Lavon et al
Examiner	Group Art Unit
Reichle	3738

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 6-5-98.
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 11-22 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 11-22 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☒ The proposed drawing correction, filed on 6-5-98 is ☐ approved ☒ disapproved.
- ☒ The drawing(s) filed on 3-27-97 is/are objected to by the Examiner.
- ☒ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of References Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

Office Action Summary

Art Unit: 3735

Applicant's remarks on page 3, line 25-29 have been noted but are moot in that the issues discussed have not been reraised.

The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on June 5, 1998 have been disapproved.

As proposed 42 in Figure 8 and 57 in Figure 10 and 42 in Figures 1-4 and that in Figure 8 are inconsistent. Approval of formal drawings is held in abeyance until such time as all the drawing objections are overcome.

The drawings are objected to for the reasons set forth on page 2, second full paragraph of the last Office Action, Paper No 4. Additionally, in Figure 8, periphery 57 should be denoted.

Applicant's remarks on page 3, line 30 - page 4, line 6 have been considered but are deemed nonpersuasive because the amendments do not overcome the objections, e.g., 41 is described as discontinuity in sheet 62 with regard to Figures 1 and 2, however in the embodiment of Figures 3-4, 41 is not a discontinuity in the sheet 62 but rather a spacing between 45 and 62 and thus 41 and 62 are not the same as shown in Figures 1 and 2 and should be denoted differently, for example, with a prime, i.e. 41', 52'.

The disclosure is objected to because of the following informalities: the objection on page 2, lines 10-11 and 15-16 of the last Office Action, Paper No. 4 are repeated.

Appropriate correction is required.

Applicant's remarks on page 4, line 7 - fourth to last line have been noted but are either deemed moot because the issues discussed have not been reraised or nonpersuasive because the

Art Unit: 3735

disclosure has not been amended to overcome the informalities, i.e. a discontinuous back sheet of substantially fluid impervious material" could be set forth and such would not be inconsistent.

Claims 11-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 11, positive antecedent basis for "the wearer" (line 3) should be defined. Also, on line 2, the terminology "removable and/or replaceable" appears to be redundant. If as interpreted in light of the specification, "replacement" requires removal of the old and placement of the new component" removable and replaceable" and "replaceable" are redundant. See page 3, lines 18 and 23 of specification. On lines 11-13, what is in the first waist region, the second component, the first component or both? In the latter two cases, antecedent basis for "said first absorbent ... region" should defined. In the first case, on line 13, after "component", --- and -- should be inserted.

Applicants' remarks on page 4, third to last line - page 5, line 9 are deemed moot because they do not specifically address the remaining informalities,

Applicant's remarks in the third - fifth full paragraphs on page 5 have been considered but are deemed moot as the issue discussed have not been reraised.

The claims are considered definite, except as noted supra, as the examiner can not show by clear and convincing evidence that an expert upon consulting the specification would not be

Art Unit: 3735

able to determine the scope of the claim. See in general W.L. Gore & Associate 721 F. 2d 1540, 220 USPQ 303 (Fed. Cir. 1983). Cert. Denied, 469 U.S. 851(1984).

Applicant's remarks on page 5, third to last line - page 6, line 13 and page 17, lines 17-29 are deemed moot. However, with regard to Applicant's argument that Lewis does not teach multi-component absorbent cores, Applicant's attention is invited to page 2, lines 45-49 and 74 91. The claim does not require limitations of the multi-component absorbent core not taught by Lewis.

Applicants remarks on page 6, line 14 - page 7, line 16 have been consideration but are deemed nonpersuasive in view of the following rejections. Furthermore it is noted that Applicant does not specifically point out what features it fails to teach and thus, other than noted below by Examiner, and in light of 37 CAR 1.111 and MEP. 714.02, Applicant's are presumed to acquiesce to the presence of the remaining features. As to Applicant's remarks on page 7, lines 13-16, Examiner established that the claim limitation have no patentable distinguishment over the prior art and thus the determination of obviousness of such structure over the prior art was never required.

Claims 11-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis<sup>u</sup> in view of Schiff, Marcus. See Figures and page 2, lines 26-91. In regard to claims 11 and 16 the Lewis device clearly includes all the claimed structure and function except for a reclosable flap and fastener and the capability of removal of the absorbent components without removal of the article. However, see Schiff, e.g., Figure, column 1, lines 10-18, and Marcus, Figures. To

Art Unit: 3735

employ a reclosable flap and fastener in combination <sup>with</sup> a back sheet discontinuity as taught by Schiff and Marcus on the Lewis device would be obvious to one of ordinary skill in the art in view of the recognition that such would provide access yet provide better prevention of escape of body fluids and the desirability to capture body fluids in any diaper. The capability of removal of the absorbent component without removal of the article necessarily flows and/or <sup>e</sup>in<sub>A</sub>evitably present in the teachings of the prior art considered by the Examiner especially in view of the teaching of Schiff.

In regard to claims 12-15 and 17-21, see paragraph bridging pages 7-8 of the last Office Action, Paper No. 4, which are repeated here.

Claims 11-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murphy in view of Lewis, Schiff and Marcus.

See discussion page 7, line 9-page 8, line 2 of the last Office Action, Paper No. 4, which is repeated here.

Additionally, see page 2, lines 3-13 and 75-88 of Murphy.

Also, the discussion of claims 11, 16 and 23 with respect to Lewis supra is repeated here but with respect to Murphy.

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis , Schiff and Marcus as applied to claim 11 above, and further in view of Murphy.

The paragraph bridging pages 6-7 of the last Office Action, Paper No. 4, are repeated here.

Art Unit: 3735


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The other newly cited patents show flapped openings.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MEP. § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

The language bracketed and underlined in claim 11 and the amendments to the specification necessitated the new grounds of objection and rejection.

Any inquiry concerning this communication should be directed to K. Reichle at telephone number (703) 308-2617.

  
K. Reichle:bhw  
August 18, 1998

  
John G. Weiss  
Supervisory Patent Examiner  
Group 3700